

1 evidence regardless of who produced it. Your
2 result must be based on the evidence. In reaching
3 a verdict you are not permitted to guess or
4 speculate.

5 We'll now define defamation and actual
6 malice. A comment is defamatory of the Plaintiff
7 if it tends to harm her reputation in the
8 community, expose her to public hatred, contempt
9 or ridicule, injure her in her business or
10 profession or deter third persons from associating
11 with her.

12 Defamation is that which tends to injure a
13 reputation in the popular sense, to diminish the
14 esteem, respect, good will or confidence in which
15 the Plaintiff is held or to excite adverse
16 derogatory or unpleasant feelings or opinions
17 against her. It is similar to the concept of
18 disgrace.

19 In determining whether a comment is
20 defamatory, the test is the effect the comment is
21 fairly calculated to produce, in other words, the
22 impression it would naturally engender in the
23 minds of the average persons among whom it is
24 intended to circulate. The words must be given by
25 you, the jury, the same significance that other

1 people are likely to attribute to them.

2 Neither the mere susceptibility of a comment
3 to an interpretation which would render it
4 harmless or innocuous nor the intention of the
5 author can conclusively defeat the Plaintiff's
6 claim that the article defamed her.

7 In your examination of the meaning of a
8 comment or comments, you are to consider the
9 alleged defamatory words in context. In
10 determining whether the comments complained of are
11 defamatory, you are to give the language used its
12 plain and natural meaning.

13 The language used in the comments may give
14 rise to conflicting inferences as to the meanings
15 intended. It is then for you to decide whether
16 the average listener would reasonably understand
17 its language as being defamatory.

18 In determining whether a broadcast is
19 defamatory, you should consider in addition to
20 what is explicitly stated what insinuation and
21 implication, if any, can be reasonably drawn from
22 that communication. It is for you, the jury, to
23 determine whether the statements broadcast about
24 Liz Randolph by the Defendants alleged any
25 defamatory matter by innuendo or imputed matters

1 which may embarrass a person or injure her in her
2 profession.

3 For a statement to be defamatory, it must be
4 a statement of fact or reasonably be understood as
5 describing actual facts about the Plaintiff or
6 actual events in which she participated. Thus a
7 false representation or statement of fact is
8 required in order for Plaintiff to recover for
9 defamation. This is a constitutional requirement
10 and a basic part of the First Amendment-defamation
11 interaction. When one cannot reasonably interpret
12 the material as portraying actual facts about the
13 Plaintiff, no damage to reputation can result.

14 As we have previously stated, the Plaintiff
15 was a public figure. As such, in order to recover
16 against the Defendants in this defamation action,
17 the Plaintiff has the burden of proving by clear
18 and convincing evidence that the Defendants
19 published the defamatory statements with actual
20 malice.

21 The term actual malice has a special meaning
22 in the law. It does not mean malice as the word
23 is commonly used. It does not mean hatred, spite,
24 ill will or a desire to injure. Those are not
25 elements of actual malice.

1 Rather, actual malice means the Defendants
2 actually knew that the on-air comments were false
3 or that the Defendants made them with reckless
4 disregard as to whether the comments were false or
5 not.

6 Acting with reckless disregard does not mean
7 recklessness as the word is commonly understood.
8 It does not mean gross neglect. Instead, acting
9 with reckless disregard for the truth means that
10 at the time the comments were broadcast, the
11 Defendants had a high degree of awareness of the
12 probable falsity of the comments.

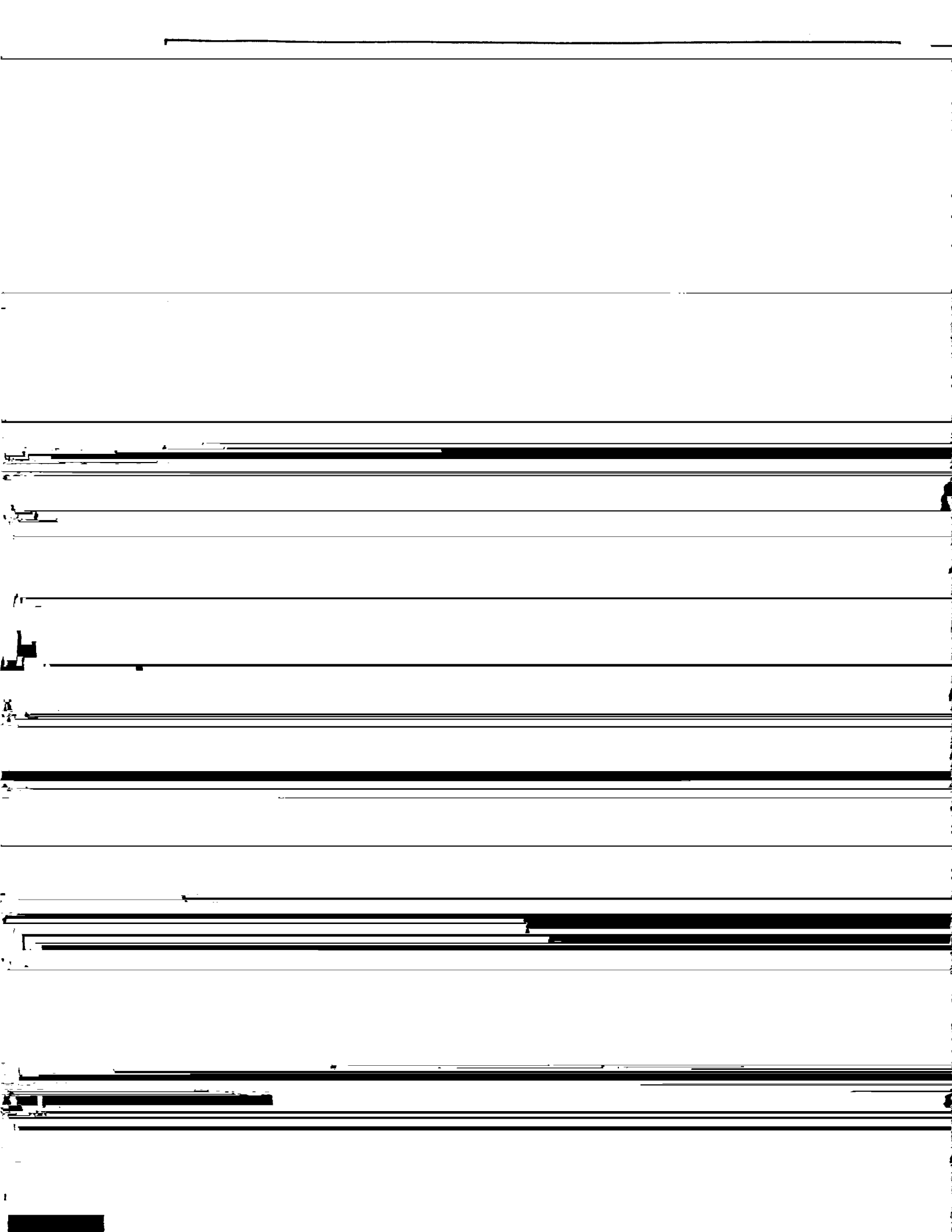
13 Actual malice, therefore, means that the
14 Defendants knew that the comments were false when
15 made or that Defendants had a high degree of
16 awareness of the probable falsity of the comments
17 when broadcast.

18 The existence of actual malice may be shown
19 in many ways. As a general rule you may consider
20 any and all competent evidence which has been
21 presented in this case, either direct or
22 circumstantial, as well as all the relevant
23 circumstances surrounding the broadcast of the
24 comments and all relevant evidence relating to the
25 Defendants' state of mind.

1 If you find Defendants Quinn and Jefferson
2 liable to the Plaintiff, then EZ Communications as
3 the employer of the Defendants would be liable to
4 the same extent as the individual Defendants for
5 Plaintiff's claim for damages for defamation and
6 for invasion of privacy since under Pennsylvania
7 law an employer is liable for the torts and other
8 malfeasance or misfeasance of its employees
9 committed in the course and scope of their
10 employment, even though the employer did not
11 authorize, justify or participate in or indeed
12 know of such misconduct or even if the employer
13 forbad the acts of his employees or disapproved of
14 them.

15 We have no intention of reviewing all the
16 testimony in detail. You have heard all that
17 testimony, and it is your duty to remember it. It
18 has also been referred to in the arguments of
19 counsel; but if your recollection of the testimony
20 is at variance with any statement made by counsel
21 or the Court, you will always be guided by your
22 memory and your recollection of the testimony.

23 You are to take the law from the Court, but
24 the testimony is exclusively for you. You apply
25 the law which the Court gives you to the facts as



ORDER OF COURT

AND NOW, to-wit, this 17th day of August, 1990, upon consideration of the Defendants' Motion For Post-Trial Relief and after review of briefs and argument thereon, it is hereby ORDERED, ADJUDGED, and DECREED that that portion of the jury award for Plaintiff for medical expenses and lost wages is stricken as duplicative of compensatory damages otherwise awarded by the jury.

Upon consideration of Plaintiff's Motion for Delay Damages pursuant to Pa. R.C.P. 238, it is further ORDERED that said motion be, and the same is hereby denied pursuant to the authority of Butler v. Flo-Ron Vending, 383 Pa. Super. 498, 557 A.2d 730 (1989).

We note that the Supreme Court of Pennsylvania has yet to recognize the tort of intentional infliction of emotional distress. See, Katazsky v. King David Memorial Park, Inc., 365 Pa. Super. 6, 527 A.2d 988 (1987). The Court, however, indicated in Katazsky, supra, that it may do so in the appropriate case. Arguably, the instant action appears to be such a case. In the interest of judicial economy and efficiency, this Court permitted a complete record to be made on the claim of intentional infliction of emotional distress because we recognize that only the appellate courts of this Commonwealth can make such a determination.

Accordingly, it is hereby ORDERED that Defendants' remaining Motions for Judgment N.O.V. and Motions for a new be, and the same are hereby denied.

BY THE COURT:

James M. ...

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ELIZABETH NELSON RANDOLPH
a/k/a LIZ RANDOLPH,

Plaintiff,

vs.

EZ COMMUNICATIONS, INC.,
a corporation,

Defendant.

CIVIL DIVISION

No. 6089 22010

Code: 011

COMPLAINT IN
CIVIL ACTION

Filed on behalf of Plaintiff

Counsel of Record
For this Party:

SAMUEL P. KAMIN, ESQUIRE
Pa. I.D. #00707

HOWARD M. LOUIK, ESQUIRE

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

ELIZABETH NELSON RANDOLPH
a/k/a LIZ RANDOLPH,

Plaintiff,

vs.

EZ COMMUNICATIONS, INC.,
a corporation,

Defendant.

No. 6039 22010

TO EZ COMMUNICATIONS, INC., Defendant:

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney, and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE
THE ALLEGHENY COUNTY BAR ASSOCIATION
920 City-County Building
Pittsburgh, Pennsylvania 15219

Telephone: (412) 261-0518

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

4. Plaintiff commenced employment with EZ Communi-

9. Beginning in February 1986, Liz Randolph, because she is female, became the target of vulgar, degrading, defamatory and slanderous remarks made by Quinn and Banana. These remarks, approved and adopted by Defendant, were publicly broadcast over WBZZ and consisted of statements which alleged or implied the following:

- (a) That Plaintiff has sexually transmitted diseases;
- (b) That Plaintiff engages in oral sex with large groups of men;
- (c) That Plaintiff is a proficient practitioner of oral sex;
- (d) That Plaintiff enjoys sexual intercourse with large groups of men;
- (e) Comments concerning Plaintiff's breasts.
- (f) That Plaintiff is licentious, lustful and libertine.

10. The statements concerning Plaintiff's alleged sex life, personality traits and alleged sexual activity, as set forth above, continued for approximately the last two (2) years of Plaintiff's employment with EZ Communications.

11. In response to the above referenced statements, Plaintiff initially lodged complaints with then Program Director Ferrare; however, Quinn and Banana continued to broadcast such defamatory and sexist comments with the knowledge and approval of Defendant.

12. In and around the summer of 1987, Plaintiff lodged the same complaints relative to Quinn and Banana's conduct with Defendant's successor Program Director Richards. Again, Plaintiff's complaints went unheeded, and Quinn and Banana continued to broadcast defamatory and sexist statements concerning Plaintiff.

13. In mid-November 1987, Plaintiff renewed her complaints with Richards. At such time, Richards stated that he could not guarantee that the comments would cease, nor guarantee Plaintiff a work environment free from degrading, sexist attacks. Instead, Richards told Plaintiff he would fire her if he caught her looking for another job.

14. The Defendant was aware at all times of the sexist and defamatory comments made by Quinn and Banana on the air, and was further aware that Plaintiff had complained and continued to complain about such comments. However, Defendant continued to permit Quinn and Banana to sexually harass Plaintiff because she was female.

15. Such sexist and defamatory comments continued to be broadcast by Quinn and Banana (with the approval of Defendant), with full knowledge of the detrimental effect such comments had on Plaintiff's emotional well being. Because of such comments, the Plaintiff, on January 22, 1988, was unable to complete her assigned duties, and was subsequently terminated from employment by Defendant on January 30, 1988, without cause. See Arbitrator's Award dated November 16, 1988, and Opinion of the United States District Court for the Western District of Pennsylvania at Civil Action 88-2636 attached hereto, marked Exhibits "A" and "B" respectively, and incorporated herein by reference.

16. On January 22, 1988, the Defendant, with pre-meditated intent, aired a comment which insinuated that Plaintiff was so proficient in oral sex that she had a tattoo imprinted on her head which read:

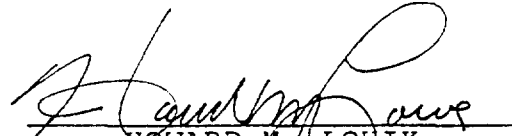
"Let go of my ears, I know what I'm doing."

17. The sexist comments broadcast by Quinn and Banana, and Defendant's conduct in approving same and as otherwise set forth above, constitute unlawful discriminatory practices

- (c) That the Defendant remedy the discriminatory effect of past practices and procedures.
- (d) That the Court direct Defendant to take further affirmative action necessary and appropriate to remedy the violation complained of herein.
- (e) That the Court provide such further legal and equitable relief as it deems necessary and appropriate.
- (f) That the Court award such other damages, attorney fees and expenses, as provided by law.

Respectfully submitted,

GOLDBERG & KAMIN


HOWARD M. LOUIK
Attorneys for Plaintiff,
ELIZABETH NELSON RANDOLPH
a/k/a LIZ RANDOLPH

AFFIDAVIT

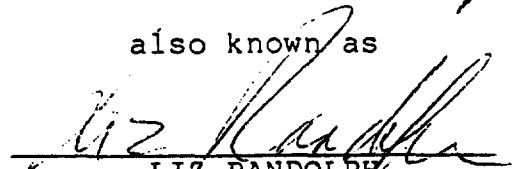
COMMONWEALTH OF PENNSYLVANIA)

) SS:
COUNTY OF ALLEGHENY)

BEFORE ME, the undersigned authority, a notary public in and for said Commonwealth and County, personally appeared ELIZABETH NELSON RANDOLPH also known as LIZ RANDOLPH, who, being duly sworn according to law, deposes and says that the averments contained in the foregoing Complaint are true and correct to the best of her knowledge, information and belief.

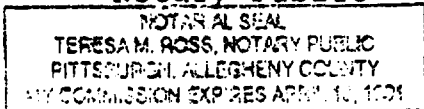

ELIZABETH NELSON RANDOLPH

also known as


LIZ RANDOLPH

Sworn to and subscribed
before me this 14th day
of December, 1989.


Notary Public



Member, Pennsylvania Association of Notaries

[illegible]

101 South Second Street, Suite 300
P.O. Box 3145

February 17, 1989

Dear Ms. Nelson-Randolph:

Exhibit "C"

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

Elizabeth Nelson Randolph
a/k/a Liz Randolph

VERSUS

ET. Communications, Inc.
a corporation

No. CD89-22010

ORDER OF COURT

AND NOW, TO-WIT, THIS 14th DAY OF Feb

90. after argument on Preliminary Objections
it is hereby ORDERED, ADJUDGED and DECREED
that Plaintiff file an amended complaint
to include the allegations as set forth in
the Pennsylvania Human Relations complaint.

By the Court

McLean

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

(b) That beginning in February 1986, through and including January 22, 1988, the Plaintiff, because she is female, was the target of sexist and slanderous comments broadcast by disc jockeys, Quinn and Banana. Such comments, approved and condoned by E2 Communications, were broadcast to hundreds of thousands of people in the Greater Pittsburgh area and implied, inter alia, that Plaintiff was sexually promiscuous, was proficient at oral sex, and enjoyed sex with large

3. Plaintiff adds the following new paragraphs to the original Complaint:

19. On February 17, 1989, the Commission issued Plaintiff a right to sue letter, a copy of which is attached as Exhibit "C" to the original Complaint.

20. As a result of the Defendant's conduct, Plaintiff has suffered damages, including wage loss, impairment of earning capacity, medical expenses, mental anguish, humiliation and emotional distress.

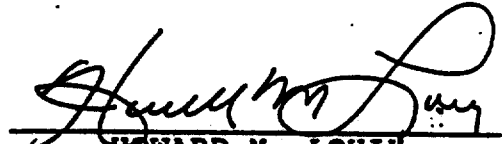
WHEREFORE, Plaintiff, Elizabeth Nelson Randolph a/k/a Liz Randolph, demands damages in an amount in excess of the arbitration limits of the Court of Common Pleas of Allegheny County, and other appropriate relief, including the following:

- (a) That Defendant make the Plaintiff whole again by an award of back pay.
- (b) That Defendant eliminate all unlawful discriminatory practices and procedures.
- (c) That the Defendant remedy the discriminatory effect of past practices and procedures.
- (d) That the Court direct Defendant to take further affirmative action necessary and appropriate to remedy the violation complained of herein.
- (e) That the Court provide such further legal and equitable relief as it deems necessary and appropriate.

(f) That the Court award such other damages attorney's fees and expenses, as provided law.

Respectfully submitted,

GOLDBERG & KAMIN

A handwritten signature in dark ink, appearing to read "Howard M. Louik", is written over a horizontal line.

HOWARD M. LOUIK
Attorneys for Plaintiff,
ELIZABETH NELSON RANDOLPH
a/k/a LIZ RANDOLPH